944.

SUPREME COURT OF THE UNITED STATES.

No. 55.

JOSEPH D. BEERS AND OTHERS, PLAINTIFFS IN ERROR,

VERSUS

RICHARD HAUGHTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OHIO.

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SUPREME COURT OF THE UNITED STATES, January Term, 1835.

JOSEPH D. BEERS,
WILLIAM L. BOOTH, and
ISAAC R. ST. JOHN,
Plaintiffs in Error,
vs.
RICHARD HAUGHTON,
Defendant in Error.

In Error to the U. S. Circuit Court for the District of Ohio.

And the plaintiffs in error bring here into Court the transcript of the record of a judgment rendered in the Circuit Court of the United States for the district of Ohio, aforesaid, and say that in the said record and judgment there is manifest error in this, to wit:

1. That the said judgment was rendered in favor of the defendant in error and against the said plaintiffs.

That there is error in the Court below, in over rulingthe demurrer of the plaintiffs to the plea of the said defendant.

For which errors, and also for other errors apparent on the face of the record and judgment, the said plaintiffs pray that the said judgment may be reversed and held for nothing.

ELISHA W. CHESTER,
HENRY STARR,
for Plaintiffs in Error.

Pleas begun and held at the court-house in the city of Columbus, on the second Monday in the month of July, being the fourteenth day of the same month, in the year of our Lord one thousand eight hundred and thirty-four, and of the American Independence the fifty-ninth, before the Honorable John McLean and Humphrey H. Leavitt, Judges of the Circuit Court of the United States, within and for the seventh circuit and district of Ohio.

JOSEPH D. BEERS,
WILLIAM L. BOOTH, and
ISAAC R. ST. JOHN } *Debt.*
against
RICHARD HAUGHTON.

Be it remembered, that heretofore, to wit: on the 24th day of December, Anno Domini, eighteen hundred and thirty-two, Joseph D. Beers, William L. Booth, and Isaac R. St. John, by Henry Starr, esq. their attorney, sued out of the clerk's office of the Court aforesaid, the following writ of summons, ad respondendum, against Richard Haughton, to wit: United States of America, district of Ohio, sct. To the marshal of said district, greeting: We command you to summon Richard Haughton, a citizen of and resident in the State of Ohio, if he be found in your bailwick, to appear before the Judges of the Circuit Court of the United States, for the 7th circuit and district of Ohio, aforesaid, at Columbus, on the first day of May next, to answer Joseph D. Beers, William L. Booth, and Isaac R. St. John, citizens of and residents in the State of New York, of a plea of debt, $4,000, damages $3,500, and this he shall in no wise omit under the penalty of the law, and have then there this writ.

Summons.

Witness the honorable John Marshall, Chief Justice of the United States, this 24th day of December, eighteen hundred and thirty-two, and in the fifty-seventh year of the Independence of the United States of America.

[SEAL.]

Attest, WILLIAM MINER, *Clerk.*

"I, Henry Starr, do acknowledge myself security for all costs which the plaintiff may be liable in this suit.

HENRY STARR." [SEAL.]

Security for costs.

And afterwards, to wit, on the first day of May, A. D. 1833, the said writ was returned into the clerk's office of the Court aforesaid, by the marshal of the district of Ohio, endorsed as follows, to wit: March 22d, 1833, I have summoned the defendant, by giving him a copy of this writ, John Patterson, Ml. by Thomas Heckewelder, Dy. Ml." and thereupon, the said plaintiffs, by their attorney aforesaid, filed in the clerk's office of the Court aforesaid, the following declaration, to wit: "State and district of Ohio, in the Circuit Court of the United States for the district of Ohio, July term, 1833, Joseph D. Beers, William L. Booth, and Isaac R. St. John, citizens and residents of the State of New York, and plaintiffs in this suit, complain of

Return of writ.

Declaration.

Richard Haughton, a citizen and resident of the State of Ohio, and defendant in this suit, in custody, &c. in a plea that he render unto them a debt of two thousand eight hundred and forty-six dollars and fifty-six cents, which he owes, and from them unjustly detains, for that whereas the said plaintiffs, on the fourteenth day of June, in the year one thousand eight hundred and thirty, sued out of the clerk's office of the said Circuit Court, their certain writ of capias ad respondendum, against Joseph Harris, and Cornelius V. Harris, in a plea of trespass on the case in assumpsit, to their damage of four thousand dollars, returnable on the second Monday of July then next, whereupon, Andrew I. Harris, and the said Haughton, became appearance bail for the said Joseph and Cornelius V. Harris, by the execution of a bail bond to the marshal of the State of Ohio, in the usual form, on the twenty-second day of June, in the year one thousand eight hundred and thirty; and the plaintiffs aver that afterwards, to wit, on the 23d day of July, one thousand eight hundred and thirty, they filed their declaration in said Court against the said Joseph Harris and Cornelius V. Harris, in the said plea of trespass on the case in assumpsit, and such proceedings were thereupon had, that afterwards, to wit, at the December term of said Court, one thousand eight hundred and thirty, to wit, on the twenty-second day of said month of December, the said plaintiffs, by the judgment and consideration of the said Court, recovered against the said Joseph Harris and Cornelius V. Harris, and also against the said Andrew I. Harris and Richard Haughton, the appearance bail as aforesaid, the sum of two thousand eight hundred and eighteen dollars and eighty-six cents, for the damages they had sustained by reason of the non-performance of certain promises and undertakings before that time made by the said Joseph and Cornelius V. Harris, to and with the said plaintiffs, as set forth and alleged in the said declaration, and also their costs expended in the prosecution of said suit, which said costs are twenty-seven dollars and seventy cents, making in all the sum of two thousand eight hundred and forty-six dollars, the debt above demanded. And the said plaintiffs aver, that afterwards, to wit, on the twenty-seventh day of the same month of December, the defendants, against whom said judgment was rendered, moved the Court to set it aside, which said motion coming on to be heard at the July term of said Court, eighteen hundred and thirty-one, it was ordered by said Court that said judgment be set aside and vacated as to the said Richard Haughton, on condition that he become special bail for the said Joseph Harris and Cornelius V. Harris in said suit, and thereupon the said Richard Haughton appeared in open Court, by Charles Fox, his attorney, to whom the said Haughton, on the twenty-eighth day of June, eighteen hundred and thirty-one, had executed a power of attorney for that purpose, and acknowledged himself special bail for the said Joseph Harris and Cornelius V. Harris, in the sum of four thousand dollars, in the cause or suit in which judgment was rendered as aforesaid, that is to say, that they, the said Joseph Harris and Cornelius V. Harris should pay and satisfy the said judgment, or render themselves into the custody of the marshal of the State of Ohio, as by the record of said recognizance of bail appears. And the plaintiffs aver, that afterwards, to wit, on the twelfth day of October, eighteen hundred and thirty-one, they sued out of the clerk's office of said Circuit Court, upon said judgment against the said Joseph Harris, Cornelius V. Harris, and Andrew I. Harris, a writ of execution, usually called a capias ad satisfaciendum, directed to the marshal of the State of Ohio, returnable to the next December term of said Court, who, after making diligent search for the said Joseph

Harris, Cornelius V. Harris, and Andrew I. Harris, returned said writ of execution into the clerk's office of said Court, that they were not to be found in his bailiwick, to wit, within the district of Ohio, aforesaid. And the said plaintiffs further say, that the judgment so as aforesaid recovered is not reversed, cancelled, or vacated, but remains of record in said Court, as will fully appear by reference to the records of the proceeding thereof. By reason of all which said several premises, the plaintiffs say an action hath accrued to them to have and demand of the said Richard Haughton, the said sum of two thousand eight hundred and forty-six dollars and fifty-six cents, the debt above demanded. Nevertheless, the said Haughton, though often requested, has not paid the said plaintiffs the said sum of money or any part thereof, but neglects and refuses so to do, to the damage of the plaintiffs, as they say, the sum of three thousand five hundred dollars, and, therefore, they bring suit.

H. STARR, *for Plaintiffs.*

And afterwards, to wit, at rules held in the clerk's office, aforesaid, on the first Monday in the month of June, in the year last aforesaid, came the said plaintiffs, by their said attorney, and entered a rule against the defendant to plead, and thereupon the said defendant, by Charles Fox, esq. his attorney, filed the following demurrer, to wit: "Seventh Circuit Court of the United States, in and for the district of Ohio, Richard Haughton, ads. Joseph D. Beers, William L. Booth, and Isaac R. St. John, action of debt. And the said Richard Haughton, by Charles Fox, his attorney, comes and defends the wrong and injury, when, &c. and for plea, say, that the matters and things set forth in the plaintiff's declaration in manner and form as therein set forth and alleged, are not sufficient in law for the plaintiffs to have and sustain his aforesaid action thereof against him, and that he is not bound by the law of the land to answer the same, and he doth, therefore, demur to the same, and this he is ready to verify, wherefore, he prays judgment of the Court whether he is bound to answer the same.

Demurrer.

And for cause of demurrer, he shows to the Court that it appears the plaintiffs have brought an action of debt upon the said supposed recognizance of bail, in the declaration mentioned, whereas they ought to have brought an action of scire facias, or to have, by motion in Court, and after fifteen days notice thereof, prior to the first day of a term of said Court, given to the said defendant, sought a judgment on said recognizance. Also, because said plaintiffs have not, in and by their said declaration, shown that said Joseph Harris and Cornelius V. Harris did not surrender themselves into the custody of the marshal of the State of Ohio previous to the commencment of the suit. Also, because it does not appear in and by said declaration, that the said plaintiffs have ever caused an execution of capias ad satisfaciendum to be issued on the judgment alleged to have been obtained by said plaintiffs against said Joseph Harris and Cornelius V. Harris, directed to the marshal of the district of Ohio. Also, because the said declaration does not show when or in what district the said supposed recognizance of the said defendant was made or entered into.

CHARLES FOX, *Attorney.*

Continuance.

And afterwards, to wit, at the July term of the said Court, anno Domini, eighteen hundred and thirty-three, this cause was continued until the next term of this Court; and afterwards, to wit, on the eighth day of November, A. D. eighteen hundred and

thirty-three, the said plaintiffs, by their attorney, aforesaid, filed in the clerk's office of the Court aforesaid, the following replication, to wit: "Circuit Court, district of Ohio, Joseph D. Beers and others vs. Richard Haughton, and for replication to the plea of the said defendant, by him above pleaded, the plaintiffs say that they ought not to be barred, by reason of any thing in said plea contained, from having and maintaining their action aforesaid, because they say that said declaration and the matters and things therein contained, are sufficient in law for them to have and maintain their action aforesaid, and this they pray may be inquired by the Court.

Replication.

H. STARR, *for Plaintiffs.*

And afterwards, to wit, at the December term of said Court, anno Domini, eighteen hundred and thirty-three, the parties, by their attornies, appear and the arguments of counsel being heard, on the demurrer to the plaintiff's declaration, it is ordered that said demurrer be sustained, and on motion of the plaintiffs, by their attorney, leave is given to amend their declaration, and thereupon the defendant amends his declaration, which amended declaration is in the words and figures following, to wit: "State and district of Ohio, in the Circuit Court of the United States, for the district of Ohio, July term, 1833, Joseph D. Beers, William L. Booth, and Isaac R. St. John, citizens and residents of the State of New York, and plaintiffs in this suit, complain of Richard Haughton, a citizen and resident of the State of Ohio, and defendant in this suit, in custody in a plea that he render unto them a debt of two thousand eight hundred and forty-six dollars and fifty-six cents, which he owes and from them unjustly detains. For that, whereas the said plaintiffs, on the fourteenth day of June, in the year one thousand eight hundred and thirty, sued out of the clerk's office of the said Circuit Court, their certain writ of capias ad respondendum, against Joseph Harris and Cornelius V. Harris, in a plea of trespass on the case in assumpsit, to their damage of four thousand dollars, returnable on the second Monday of July, then next, whereupon, Andrew I. Harris, and the said Haughton became appearance bail for the said Joseph and Cornelius V. Harris, by the execution of a bail bond to the Marshal of the district of Ohio, in the usual form, on the twenty-second day of June, in the year one thousand eight hundred and thirty. And the plaintiffs aver that afterwards, to wit, on the twenty-third day of July, one thousand eight hundred and thirty, they filed their declaration in said Court against the said Joseph Harris, and Cornelius V. Harris, in the said plea of trespass on the case in assumpsit, and such proceedings were thereupon had; that afterwards, to wit, at the December term of said Court, one thousand eight hundred and thirty, to wit, on the twenty-second day of said month of December, the plaintiffs by the judgment and consideration of the said Court, recovered against the said Joseph Harris and Cornelius V. Harris, and also against the said Andrew I. Harris and Richard Haughton the appearance bail as aforesaid, the sum of two thousand eight hundred and eighteen dollars and eighty-six cents for the damages they had sustained by reason of the non-performance of certain promises and undertakings, before that time made by the said Joseph and Cornelius V. Harris, to and with the said plaintiffs, as set forth and alleged in the said declaration, and also their costs expended in the prosecution of said suit, which said costs are twenty seven dollars and seventy cents, making in all the sum of two thousand eight

Demurrer sustained.

Leave given to amend declaration.

Amended declaration.

hundred and forty-six dollars and fifty-six cents, the debt above demanded; and the said plaintiffs aver that afterwards, to wit, on the twenty-seventh day of the same month of December, the defendants, against whom said judgment was rendered, moved the Court to set it aside, which said motion coming on to be heard at the July term of said Court, eighteen hundred and thirty-one, it was ordered by the said Court, that said judgment be set aside and vacated as to the said Richard Haughton, on condition that he became special bail for the said Joseph Harris and Cornelius V. Harris, in said suit, and thereupon the said Richard Haughton appeared in open court, by Charles Fox, his attorney, to whom the said Haughton, on the twenty-eighth day of June, eighteen hundred and thirty-one, had executed a power of attorney for that purpose, and acknowledged himself special bail for the said Joseph Harris and Cornelius V. Harris, in the sum of four thousand dollars, in the cause or suit in which judgment was rendered as aforesaid, that is to say, that they, the said Joseph Harris and Cornelius V. Harris, should pay and satisfy the said judgment or render themselves into the custody of the marshal of the district of Ohio, as by the record of said recognizance of bail appears; and the plaintiffs aver that afterwards, to wit, on the twelfth day of October, eighteen hundred and thirty-one, they sued out of the clerk's office of said Circuit Court, upon said judgment against the said Joseph Harris, Cornelius V. Harris, and Andrew I. Harris, a writ of execution usually called a capias ad satisfaciendum, directed to the marshal of the district of Ohio, returnable to the then next December term of said Court, who, after making diligent search for the said Joseph Harris, Cornelius V. Harris, and Andrew I. Harris, returned said writ of execution into the clerk's office of said Court that they were not to be found in his bailiwick, to wit, the district of Ohio aforesaid; and the said plaintiffs further say, that afterwards, to wit, at the December term, 1831, of the said Court, the said Andrew I. Harris moved the Court to set aside said judgment as to him, which was granted or allowed, but as to the said Joseph Harris and Cornelius V. Harris, it is in full force and effect, as appears by reference to the record of the proceedings thereof, by reason of all which said several premises, the plaintiffs say an action hath accrued to them to have and demand of the said Richard Haughton the said sum of two thousand eight hundred and forty-six dollars and fifty-six cents, the debt above demanded. Nevertheless, the said Haughton, though often requested, has not paid the said plaintiffs the said sum of money or any part thereof, but neglects and refuses so to do, to the damage of the plaintiffs, as they say, the sum of three thousand five hundred dollars, and, therefore, they bring suit. H. STARR, *for Plaintiffs.*"

Remanded to rules continued.

And thereupon this cause was remanded to rules and continued until the next term of this Court; and afterwards, to wit, at rules held in the clerk's office of said Court, on the first Monday in the months of January, February, March, and April, anno Domini, eighteen hundred and thirty-four, this cause was continued; and afterwards, to wit, at rules held as aforesaid, on the first Monday in the month of May, in the year last aforesaid, came the plaintiffs, by their attorney, and entered a rule against the defendant to plead by June rules; and afterwards, to wit, at rules held as aforesaid on the first Monday in June, in the year last aforesaid, came the said plaintiffs, by their attorney, aforesaid, and the said defendant having failed to plead, as he was ruled to do, a default was entered against the said defendant, according to the rules of said Court, to be inquired of, &c. And afterwards, to

Default.

wit, on the day and year first aforesaid, to wit, on the fourteenth day of July, Anno Domini, eighteen hundred and thirty-four, before the Circuit Court, aforesaid, came, as well the said plaintiffs as the said defendant, by their attornies, aforesaid, and by consent, the default entered at rules is opened up, and the defendant files his pleas as follows, to wit: Default opened up.

RICHARD HAUGHTON, *ads.* JOSEPH D. BEERS, WILLIAM L. BOOTH and ISAAC R. ST. JOHN. } *7th Circuit Court of the United States, Ohio District. Action of Debt.* Pleas.

1. And the said defendant, by Charles Fox, his attorney, comes and defends the wrong, &c. when, &c. and for plea, says there is no record of said supposed recognizance of bail remaining in said Court, as in said declaration is set forth, and this he is ready to verify, wherefore, he prays judgment of the said plaintiffs ought to have or maintain their aforesaid action thereof against him.

2nd. And for further plea in this behalf, by leave in this behalf of the Court, first had and obtained, the said defendant says the said plaintiffs their aforesaid action ought not to have or maintain, because he says there is no record of said judgment in favor of said plaintiffs against the said Joseph Harris and Cornelius V. Harris, remaining of record in said Court, in manner and form as the said plaintiffs, in their said declaration, have alleged, and this he is ready to verify, wherefore, he prays judgment of the said plaintiffs their said action ought to have or maintain against him.

3rd. And for further plea in this behalf, the said defendant, by leave, &c. first had and obtained, says the said plaintiffs their aforesaid action ought not to have and maintain, because he says the said plaintiffs did not, on the said twelfth day of October, in the year eighteen hundred and thirty-one, or at any other time before the commencement of this suit, sue out of the clerk's office of said Circuit Court, upon said judgment against said Joseph Harris and Cornelius V. Harris, a writ of execution usually called a capias ad satisfaciendum, directed to the marshal of the State of Ohio, returnable to the next December term of said Court, and of this he puts himself upon the country, and the plaintiffs do the like.

8th. And the said defendant, for further plea in this behalf, by like leave of the Court, first had and obtained, says the plaintiffs their aforesaid action ought not further to have and maintain, because, he says, that, by the tenth rule of practice of this Court, established and adopted by this Court, at its December term, eighteen hundred and thirty-one, which said rule has ever since been and now is in full force and effect, it is provided that if a defendant upon a capias does not give sufficient appearance bail, he shall be committed to prison, to remain until discharged by due course of law, but under neither mesne nor final process, shall any individual be kept imprisoned, who, under the insolvent law of the State, has for such demand been released from imprisonment, and the *the* said defendant avers that after the debt became due, upon which the said judgment, in the said declaration mentioned is founded, to wit, in the term of February, in the year eighteen hundred and thirty-one, the said Cornelius V. Harris being returned to the Court of Common Pleas for Hamilton county and State of Ohio, by the commissioner of insolvents of Hamilton county, in the State of Ohio, as a resident of said county and State for more than two years next preceding, as an applicant for the benefit of the act, entitled an act for the relief of insolvent

debtors, and having also returned a schedule in writing, delivered to said commissioner by said Cornelius V. Harris, of all debts by him owing, among which the said debt in the judgment in the said plaintiff's declaration mentioned is founded, is named, did, at said February term of said Court, personally appear before the Judges of said Court, in open Court, and the said Court then and there having full jurisdiction of such matters, and such applications for relief, did then and there, at the term last aforesaid, at Hamilton county aforesaid, order and adjudge that thesaid Cornelius V. Harris should forever after be protected from arrest or imprisonment for any civil action or debt or demand in the said schedule of his debts, so delivered to the said commissioner of insolvents for Hamilton county, which said order and judgment of said Court is now in full force and virtue and unreversed. And the said defendant further avers that afterwards, to wit, in the term of February, in the year eighteen hundred and thirty-two, the commissioners of insolvents in and for Hamilton county, in the State of Ohio, returned the said Joseph Harris to the Court of Common Pleas of said county, as a petitioner for the benefit of and act, passed by the Legislature of the State of Ohio, entitled "an act for the relief of insolvent debtors," who, at the time of his application, was under arrest, and returned to said Court a schedule, delivered to him by the said Joseph Harris, showing the debt by him owing and the names of his creditors, among which debts was the said judgment, mentioned in the said plaintiffs' declaration, and the said Joseph Harris, afterwards, in the term of February, in the year eighteen hundred and thirty-two, appeared in said Court of Common Pleas, before the Judges thereof, and filed his petition in said Court, praying for the benefit of the act for the relief of insolvent debtors, and such other proceedings were had thereon, that the said Court, at the term last aforesaid, ordered and adjudged that the said Joseph Harris be discharged from arrest on account of the debts in said schedule mentioned, in pursuance of the statute in such case made and provided, which said order and judgment is now in full force and virtue and unreversed. All which the said defendant is ready to verify, wherefore, he prays judgment of the said plaintiffs ought further to have and maintain their aforesaid action thereof, against him, &c.

CHARLES FOX, *Attorney for Defendant.*

The defendant having filed his pleas in this cause, the plaintiffs moved the Court that the defendant make his election between those pleas in bar of the action and those which set up matter of defence arising since the commencement of this suit, and the Court being now sufficiently advised of and concerning the motion, order and direct that the defendant make his election between those pleas, which allege matter of defence before the commencement of this suit, and those which set up matter of defence arising since the commencement of this suit, and thereupon, the said plaintiffs, by their attornies, file in Court, here, the following replication and demurrer, to wit: "Joseph D. Beers, William L. Booth and Isaac R. St. John vs. Richard Haughton, seventh Circuit Court of the United States, Ohio district, action of debt. And the said plaintiffs, as to the plea of the said defendant, first above pleaded, say that they, the said plaintiffs, by reason of any thing in that plea alleged, ought not to be barred of having and maintaining their aforesaid action thereof against the said defendant, because they say that there is such a record of the said recognizance remaining in the said Court, as the plaintiffs have above in their said declaration in that behalf alleged, and this the said plaintiffs are

Replication.

ready to verify by the said record, when, where, and in such manner, as the Court here shall direct and award, and he prays that the said record may be inspected and seen by the said Court here, wherefore, he prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him, &c.

And as to the plea of the said defendants secondly above pleaded, the said plaintiffs say that they, by reason of any thing in that plea alleged, ought not to be barred of having and maintaining their aforesaid action thereof against the said defendant, because they say that there is such a record of the said judgment remaining in the said Court, as the plaintiffs have above in their said declaration in that behalf alleged, and this the said plaintiffs are ready to verify by the said record, when, where, and in such manner as the Court here shall direct and award, and he prays that the said record may be inspected and seen by the said Court here, wherefore, they pray judgment and their debt aforesaid, together with their damages by them sustained, on occasion of the detaining thereof to be adjudged to them, &c.

And the said plaintiffs, as to the plea of the said defendants, thirdly above pleaded, and whereof he hath put himself upon the country, do the like.

And the said plaintiffs, as to the eighth plea, lastly above pleaded, say that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having or maintaining their aforesaid action thereof, against the said defendant, and that the said plaintiffs are not bound, by the laws of the land, to answer the same, and this the said plaintiffs are ready to verify. Wherefore, for want of sufficient pleas in this behalf, the said plaintiffs pray judgment and their damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, &c.

CASWELL & STARR,
ELISHA W. CHESTER.

Joinder in demurrer.

And thereupon, the defendant, by his attorney, files the following joinder in demurrer, to wit: "Seventh Circuit Court United States, Ohio district, John D. Beers, William L. Booth and Isaac R. St. John vs. Richard Haughton. And the said defendant, by his attorney, comes and says that his said eighth plea, above pleaded, and the matters therein contained in manner and form as the same is above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiffs from having and maintaining their aforesaid action thereof against him, the defendant, and that the said defendant is ready to verify and prove the same, when, where, and in such manner as the Court shall direct; wherefore, inasmuch as said plaintiffs have not answered said plea, nor hitherto in any manner denied the same, the said defendant pray judgment, and that said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him, the defendant.

CHARLES FOX, *Attorney.*

Judgment.

The Court being now sufficiently advised of and concerning the demurrer of the plaintiffs to the eighth plea of the defendant, (the fourth, fifth, sixth, and seventh pleas being withdrawn,) are of opinion that said eighth plea, and the matters therein contained, are sufficient in law to bar the plaintiffs from having and maintaining their action aforesaid, against the defendant, and the Court do accordingly overrule said demurrer. It is, therefore, considered by the Court that the said de-

fendant go hence without day, and recover of the said plaintiffs his costs in this behalf expended. On motion of the plaintiffs, by their attorney, a writ of error is allowed in this cause, to the Supreme Court of the United States, on condition a bond is filed with the clerk of this Court, in the sum of five hundred dollars, with Henry Starr, security.

Costs.—Attorney, - - - - - - -	$ 5 00
Clerk Miner, - - - - - - - -	20 09
Marshal Patt'n. - - - - - -	7 75
	$32 84

Bond.

Know all men by these presents, that we, Joseph D. Beers, William L. Booth, Isaac R. St. John, and Henry Starr, are held and firmly bound unto Richard Haughton, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, sealed with our seals and dated this 23d day of July, 1834. The condition of this obligation is such, that whereas, at the July term of the seventh Circuit Court of the United States, within and for the district of Ohio, in a certain action of debt pending in said Court, wherein Joseph D. Beers, William L. Booth and Isaac R. St. John, are plaintiffs, and the above named Richard Haughton is defendant, the said Court rendered their judgment in favor of the said Richard Haughton, against the said Joseph D. Beers, William L. Booth, and Isaac R. St. John, for his costs and charges in said suit expended, taxed at thirty-two dollars and eighty-four cents; on which said judgment Joseph D. Beers, William L. Booth, and Isaac R. St. John prayed and was allowed a writ of error and citation to the Supreme Court of the United States, all of which will more fully appear, reference being had to the records of said Circuit Court.

Now, the condition of this obligation is such, if the said Joseph D. Beers, William L. Booth, and Isaac R. St. John shall prosecute said writ of error to effect and obtain a reversal of the judgment of the aforesaid Circuit Court, then, and in that case, this obligation to be null and void, otherwise to remain in full force and virtue in law.

JOSEPH D. BEERS, [SEAL.]
WILLIAM L. BOOTH, [SEAL.]
ISAAC R. ST. JOHN, [SEAL.]
By H. Starr, their Att'y.
HENRY STARR, [SEAL.]

UNITED STATES OF AMERICA, } ss.
District of Ohio, }

I, William Miner, Clerk of the Circuit Court of the United States, within and for the District of Ohio, do certify that the foregoing is truly taken and copied from the records of the proceedings of the seventh Circuit Court of the United States, within and for the Ohio District.

In testimony whereof, I do hereunto subscribe my name, and af- [SEAL.] fix the *the* seal of said Court, at the city of Columbus, this 15th day of September, A. D. 1834.

WILLIAM MINER, *Clk.*

Clerk Miner's fees for transcript, seal, writ of error, &c. $13 36

THE UNITED STATES OF AMERICA.

To the honorable the Judges of the Circuit Court of the United States for the seventh Circuit and District of Ohio,—GREETING:

Whereas, in the record and process, and also in the rendering judgment in a certain action of which was in the said Court, between Joseph D. Beers, William L. Booth, and Isaac R. St. John, plaintiffs, and Richard Haughton, defendant, manifest error hath intervened, as it is said, to the great damage of the said Joseph D. Beers, William L. Booth, and Isaac R. St. John, as by their complaint we are informed, and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, COMMAND you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly without delay, you send and certify to the Judges of the Supreme Court of the United States, on the first day of the next term of said Court, so that the judgment aforesaid being inspected, the Court may further for correcting the error aforesaid, do that which of right and according to law ought to be done.

[SEAL] Witness the honorable John Marshall, Chief Justice of the United States of America, this twenty-second day of July, in the year of our Lord, one thousand eight hundred and thirty-four, and in the 59th year of the American Independence.

Attest, WILLIAM MINER, *Clerk.*

I, John McLean, one of the Associate Justices of the Superior Court of the United States, do allow this writ of error.

Witness my hand and seal the 22d day of July, anno Domini, eighteen hundred and thirty-four.

JOHN McLEAN.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Richard Haughton,—Greeting:

Whereas, Joseph D. Beers, William L. Booth, and Isaac R. St. John, obtained the allowance of our writ of error to the Circuit of the United States for the seventh circuit and district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment in an action of , wherein you, the said Richard Haughton, in that action lately recovered against the said Joseph D. Beers, William L. Booth, and Isaac R. St. John, thirty-two dollars and eighty-four cents the costs, as by the said record in the said Circuit Court and district aforesaid, remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Joseph D. Beers, William L. Booth, and Isaac R. St. John, we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the Judges of the said Supreme Court, at the city of Washington, at the next term of said Court, to be holden on the second Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

[SEAL.] Witness the honorable John Marshall, Chief Justice of the United States of America, this 22d day of July, in the year of our Lord, one thousand eight hundred and thirty-four, and in the fifty-ninth year of the American Independence.

Attest, JOHN McLEAN.

I have cited the within named Richard Haughton to appear in the Supreme Court of the United States, as within commanded, by reading to him this citation, and by giving to him a copy of same.

THOS. HECKEWELDER, *Dep. Marshal,*
For JOHN PATTERSON, *Marshal.*

November 11*th*, 1834.

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SUPREME COURT OF THE UNITED STATES.

No. 57.

THE UNITED STATES, PLAINTIFF,

VERSUS

JOHN BAILEY.

KENTUCKY—CIRCUIT COURT UNITED STATES.

United States of America, 7th Circuit Kentucky District, November Term, 1834.—November 26th.

United States vs. John Bailey. — THE UNITED STATES OF AMERICA, *against* JOHN BAILEY. — *On an Indictment for Perjury.*

Be it remembered, that, on the trial of the issue on the plea of not guilty to the following indictment, the following question arose: (indictment to wit:)

UNITED STATES OF AMERICA, *Seventh Circuit, Kentucky District.* } to wit:

First Count.

The grand jurors of the United States of America, empannelled at the November term of the court of the said United States, for the seventh circuit and district of Kentucky, in the year of Christ one thousand eight and hundred and thirty-four, and sworn and charged to inquire for the body of the said district of Kentucky, upon their oath, present:

That, by an act of the Congress of the United States of America, entitled "An act to provide for liquidating and paying certain claims of the State of Virginia, approved on the fifth day of July, in the year one thousand eight hundred and thirty-two, it was, amongst other things, in substance, enacted, that the Secretary of the Treasury of the United States, should adjust and settle such of the claims for half pay of the officers of the regiment commanded by Colo. Clarke, employed in the Illinois service, as had not been paid or prosecuted to judgments against the State of Virginia, and for which said State would be bound upon the principles of the half pay cases which had theretofore been decided in the supreme court of appeals of the said State, and that the amount of the said claims, so adjusted and settled, should be paid out of any money into the Treasury not otherwise appropriated by law.

And afterwards, to wit: on the seventeenth day of November, in the year of Christ one thousand eight hundred and thirty-two, a certain Warren Bailey, a certain Charles C. Bailey, and a certain John Bailey, alleging themselves to be the legal representatives of a certain other John Bailey, then de-

ceased, formerly of the county of Bath, in the district aforesaid, that is to say, the executors and residuary legatees of the said John Bailey, deceased, and alleging that the said John Bailey, deceased, had been a captain in the aforesaid regiment, commanded by Colo. Clark, employed in the Illinois service, made a claim against the United States for the half pay alleged to be due for the alleged services of the said John Bailey, deceased, in the regiment aforesaid, from the State of Virginia, and for which it was alleged, the said State was bound upon the principles of the half pay cases which had been decided in the supreme court of appeals of the said State, and which half pay, it was alleged, was payable by the United by virtue of the provisions of the act of Congress aforesaid; and it became and was material, and conducive to the success of the said claim, to show and prove that the said John Bailey, deceased, was reputed a captain in the regiment aforesaid, commanded by Colo. Clark, employed in the Illinois service, commonly called the Illinois regiment. And afterwards, that is to say, on the twenty-fifth day of November, in the year of Christ one thousand eight hundred and thirty-two, at the county of Bath, in the district of Kentucky, in the seventh circuit within the jurisdiction of this court, John Bailey, labourer, late of the said county of Bath, for the purpose of furnishing evidence to the Secretary of the Treasury in support of the claim made as aforesaid, against the United States for the half pay aforesaid, and to procure the allowance and payment of the amount of the said claim, came in his proper person before one Josiah Reed, then and there being a justice of the peace of the commonwealth of Kentucky, in and for the county of Bath aforesaid, and duly authorised and empowered to administer oaths and to take affidavits within the said county of Bath, and did then and there take his corporal oath upon the Holy Gospel of God, and was in due manner sworn before the said Josiah Reed, so being such justice of the peace, having sufficient power and authority to administer such oath to the said John Bailey in that behalf, and the said John Bailey, being so sworn, did then and there upon his oath aforesaid, feloniously, falsely, wickedly, willfully, and corruptly, and with intent to defraud the United States, sworn and make affidavit in substance and to the effect following, that is to say:

That the said John Bailey, deceased, was, from the earliest recollection of him, the said John Bailey, reputed a captain in the revolutionary army and in the Illinois regiment, (meaning the regiment aforesaid, commanded by Colo. Clark, employed in the Illinois service) whereas, in truth and in fact, the said John Bailey, deceased, had not been a captain, nor did he serve as such—in the revolutionary army, nor in the regiment commanded by Colo. Clarke, employed in the Illinois service; and whereas, in truth and in fact, the said John Bailey, deceased, never was reputed a captain in the army of the revolution nor in the Illinois regiment; that is to say, the regiment aforesaid, commanded by Colo. Clark, employed in the Illinois service, as the said John Bailey well knew, at the time of making the said false, wilful, and corrupt oath; and so the said jurors say that, the said John Bailey, on the day and year, at the place and within the jurisdiction aforesaid, before the said Josiah Reed, so as aforesaid, having competent authority to administer the said oath to the said John Bailey, falsely and wickedly, in manner and form aforesaid, did commit wilful and corrupt perjury, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Second Count.

And the jurors aforesaid, upon their oath aforesaid, do further present that, on the twentieth day of November, in the year of Christ one thousand eight hundred and thirty-two, a claim was made against the United States by a certain Warren Bailey, a certain Charles C. Bailey, and a certain John Bailey, being the legal representatives, that is, the executors and residuary legatees of a certain other John Bailey, then deceased, formerly of the county of Bath aforesaid, for a large sum of money ; that is to say, for the sum of ten thousand three hundred and ninety-nine dollars and fifty-six cents, alleged to be payable by the United States, in virtue of the provisions of an act of the Congress of the United States, entitled "An act to provide for liquidating and paying certain claims of the State of Virginia," approved on the fifth day of July, in the year one thousand eight hundred and thirty-two ; and to establish the said claim, it became necessary to prove that the said John Bailey, dec'd, had been a captain in the regiment commanded by Colo. Clark, employed in the Illinois service, commonly called the Illinois regiment, and for that purpose to shew that he, the said John Bailey, deceased, was reputed to have been such captain in said regiment ; and that afterwards, that is to say, on the twenty-fifth day of November, in the year of Christ one thousand eight hundred and thirty two, at the county of Bath aforesaid, in the district of Kentucky aforesaid, in the seventh circuit, and within the jurisdiction of this court, the said John Bailey, contriving and intending to furnish evidence in support of the claim aforesaid against the United States, and to the end that the amount so as aforesaid claimed, might be obtained and received from the United States, came in his proper person before one Josiah Reed ; he, the said Reed, then and there being one of the justices of the peace of the commonwealth of Kentucky, in and for the county of Bath aforesaid, and duly authorised and empowered to administer oaths, and to take affidavits within the said county of Bath, and then and there, before the said Josiah Reed, in due form of law, was sworn, and took his corporal oath upon the holy Gospel of God, and the said John Bailey, being so sworn, as aforesaid, not having the fear of God before his eyes, but being moved and instigated by the devil, then and there, upon his oath aforesaid, before the said Josiah Reed, then and there having lawful and competent power and authority, to administer the said oath to the said John Bailey, in that behalf, with intent to defraud the United States, did, knowingly and wilfully, swear falsely to the truth of the matters contained in a certain affidavit in writing, which said affidavit is as follows, that is to say :

THE COMMONWEALTH OF KENTUCKY, } *sct.*
County of Bath. }

The affidavit of John Bailey, one of the executors of Capt. John Bailey, dec'd, states that he is not interested in said estate ; that Warren Bailey, jr., and James C. Bailey, who have joined with him in a power of attorney, to the honorable Richard M. Johnson, to draw any moneys that may be due them, from the Government of the United States, are the residuary legatees, and solely interested ; that he is years of age, and the son of said John Bailey, deceased, who, from his earliest recollection, was reputed a captain in the revolutionary army, and in the Illinois regiment ; that he has seen his father's commission, and thinks there were two, of that fact he will not be certain, but it is his strongest impression, and is perfectly confident that

the commissions, if two, both were signed by Thomas Jefferson; that his father's papers fell into his hands, as executor, and he has made many fruitless searches for them, and can in no wise account for their loss, unless they were given to Genl. Thomas Fletcher, dec'd, while a member of Congress, to see if he could get any thing, as affiant knows that his father applied to said Fletcher to do something for him, and understood afterwards, the law had made no provision for cases situated like said John Bailey. As witness my hand and seal, this day of November, 1832.

JN. BAILEY. [SEAL.]

Whereas, in truth and in fact, the said John Bailey, deceased, (mentioned in said affidavit) was not, at the time the said John Bailey took his said oath, reputed a captain in the revolutionary army, nor in the Illinois regiment; and whereas, in truth and in fact, the said John Bailey, deceased, never was reputed in the revolutionary army, nor in the Illinois regiment; and whereas, in truth and in fact, the said John Bailey, at the time he took his oath aforesaid, well knew that the said John Bailey, deceased, was not then nor had he ever been, reputed a captain in the revolutionary army, nor in the Illinois regiment; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Bailey, on the said twenty-fifth day of November, in the year of Christ one thousand eight hundred and thirty-two, at the county of Bath aforesaid, in the district of Kentucky aforesaid, in the seventh circuit, and within the jurisdiction of this court, before the said Josiah Reed (he, the said Josiah Reed, then and there having such power and authority as aforesaid,) by his own act and consent, and of his own wicked and corrupt mind, did, knowingly and wilfully, commit perjury to the great displeasure of Almighty God, to the great contempt of the United States of America to the evil and pernicious example of all others in the like case, offending against the peace and dignity of the United States of America, and contrary to the form of the statute of the United States of America, in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present that, the said John Bailey heretofore, that is to say, on the twenty-fifth day of November, in the year of Christ one thousand eight hundred and thirty-two, at the county of Bath aforesaid, in the district of Kentucky aforesaid, in the seventh circuit, and with the jurisdiction of this court, came in his own proper person before one Josiah Reed, he, the said Josiah Reed, then and there being a justice of the peace, in and for the county of Bath aforesaid, and fully authorised and empowered to administer oaths within the said county, and was then and there in due manner sworn before the said Josiah Reed, and the said John Bailey, being so sworn, then and there, upon his oath aforesaid, deliberately did falsely swear, in substance, that John Bailey, deceased, the father of the said John Bailey, was, from the earliest recollection of him, the said John Bailey, reputed a captain in the revolutionary army, and in the Illinois regiment; whereas, in truth and in fact, the said John Bailey, deceased, father of the the said John Bailey, was not at the time of the making the oath aforesaid, reputed in tne revolutionary army, and in the Illinois regiment; and whereas, in truth and in fact, the said John Bailey never was reputed a captain in the revolutionary army, and in the Illinois regiment, and the jurors find that the oath aforesaid, was made by the said John Bailey, in support of a claim against the United States, made by one Warren Bailey, one Charles C. Bailey, and the said John Bailey, for a large sum of money, that

is to say, the sum of ten thousand three hundred and ninety-nine dollars and fifty-six cents, under and by virtue of the provisions of an act of the Congress of the United States, entitled "An act to provide for liquidating and paying certain claims of the State of Virginia, approved on the fifth day of July, in the year one thousand eight hundred and thirty-two, against the peace and dignity of the United States of America, and contrary to the form of the statute of the United States of America, in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Bailey heretofore, that is to say, on the twenty-fifth day of November, in the year of Christ one thousand eight and thirty-two, at the county of Bath aforesaid, in the district of Kentucky aforesaid, in the seventh circuit and within the jurisdiction of this court, came in his proper person before one Josiah Reed, he, the said Josiah Reed, then and there being one of the justices of the peace, of the commonwealth of Kentucky, in and for the county of Bath aforesaid, duly commissioned, qualified, and acting as such, and fully and duly authorised and empowered, to administer oaths and to take affidavits, and then and there was, in due form of law, sworn before the said Josiah Reed, and the said John Bailey, being so sworn, as aforesaid, before the said Josiah Reed, then and there, having lawful and competent power and authority, to administer the said oath to the said John Bailey, in that behalf, deliberately did falsely swear to the truth of the matters contained in a certain affidavit in writing, which said affidavit is as follows, that is to say :

COMMONWEALTH OF KENTUCKY, } *sct.*
County of Bath. }

The affidavit of John Bailey, one of the executors of captain John Bailey, deceased, states, that he is not interest in said estate ; that Warren Bailey, jr., and James C. Bailey, who have joined with him in a power of attorney, to the honorable Richard M. Johnson, to draw any moneys that may be due them from the Government of the United States, are the residuary legatees, and solely interested ; that he is years of age, and the son of said John Bailey, dec'd, who, from his earliest recollection, was reputed a captain in the revolutionary army, and in the Illinois regiment ; that he has seen his father's commission, and thinks there were two ; of that fact, he will not be certain, but it is his strongest impression, and is perfectly confident, that the commissions, if two, both were signed by Thomas Jefferson ; that his father's papers fell into his hands, as executor, and he has made many fruitless searches for them, and can in no wise account for their loss, unless they were given to Genl. Thomas Fletcher, dec'd, while a member of Congress, to see if he could get any thing, as affiant knows that his father applied to said Fletcher to do something for him, and understood afterwards the law had made no provision for cases situated like said John Bailey.

As witness my hand and seal, this day of November, 1832.

JN. BAILEY. [SEAL.]

Whereas, in truth and in fact, the said John Bailey, deceased, (mentioned in the said affidavit,) was not, at the time of making of the said affidavit, reputed a captain in the revolutionary army and in the Illinois regiment, and whereas, in truth and in fact, the said John Bailey, deceased, never was reputed a captain in the revolutionary army and in the Illinois regiment ; and

whereas, in truth and in fact, the said John Bailey, at the time of his making the aforesaid affidavit, well knew that the said John Bailey, deceased, (mentioned therein) was not then, nor had he ever been, reputed a captain in the revolutionary army and in the Illinois regiment, and the jurors find that the facts, so as aforesaid sworn to by the said John Bailey, in the said affidavit, to wit, that the said John Bailey, dec'd, was reputed a captain in the revolutionary army and in the Illinois regiment, was material to the success of a certain claim hereinafter mentioned, made against the United States, by the legal representatives of the said John Bailey, deceased; and the jurors do further find that the oath so as aforesaid, made by the said John Bailey, was made with interest to defraud the United States, and in support of a claim against the United States made by the legal representatives of the said John Bailey, deceased, for a large sum of money, that is to say, for the sum of ten thousand three hundred and ninety-nine dollars and fifty-six cents, alleged to be payable by the United States, under and by virtue of the provisions of an act of the Congress of the United States, entitled "An act to provide for liquidating and paying certain claims of the State of Virginia," approved on the fifth day of July, in the year one thousand eight hundred and thirty-two, for half pay for the alleged services of the said John Bailey, deceased, as a captain in the regiment commanded by Colo. Clark, commonly called the Illinois regiment, against the peace and dignity of the United States of America, and contrary to the form of the statute of the United States of America, in such case made and provided.

L. SANDERS, Jr., *Attorney*
for the United States for the District of Kentucky.

The attorney for the United States read, in evidence, the papers set out in the indictment purporting to be the affidavit of the prisoner, with the certificates of the said Josiah Reed and William Suddeth, and gave evidence to the jury conducing to prove that the prisoner did, at the time and place charged in the indictment, take the oath as charged, and subscribe the paper set out in the indictment as his affidavit before the said Reed, and that the said Reed was then and there a justice of the peace of the commonwealth of Kentucky, in and for the said county of Bath, duly commissioned, qualified, and acting as such, and also gave evidence conducing to prove that, immediately after the passage of the said act of Congress, of the 5th day of July, 1832, entitled "An act for liquidating and paying certain claims of the State of Virginia," the Secretary of the Treasury did establish, as a regulation for the Government of the department and its officers, in their action upon the claims in said act mentioned, that affidavits made and subscribed before any justice of the peace, of any of the States of the United States, would be received and considered, to prove the persons making claims under said act or the deceased whom they represented, were the persons entitled under the provisions thereof, and that the said regulations had been ever since acted under at the department, and numerous claims heard, allowed, and paid, on such affidavits, and also gave evidence conducing to prove that the prisoner, acting as the executor of his father, John Bailey, had, before the time of making and subscribing said affidavit, asserted the claim therein mentioned, and employed Thomas Triplett to prosecute the same, and receive the money thereon; that the said Triplett did afterwards present the said affidavit and certificates, in support of said claim at the said department, on which, together with other affidavits, the same was allowed and the money

paid, and a part thereof paid to the prisoner. The above being all the evidence conducing to prove the authority or jurisdiction of the said Josiah Reed, to administer said oath and take said affidavit, the counsel for the prisoner moved the court to instruct the jury, that the said Josiah Reed had no authority or jurisdiction to administer said oath or take said affidavit, and that whatever other facts they might find on the evidence, the prisoner could not have committed the crime of perjury, denounced by the 13th section of the act of Congress, more effectually to provide for the punishment of certain claims against the United States and for other purposes, "approved on the 3d March, 1825," nor of false swearing denounced by the 3d section of the act "in addition to the act" entitled "An act for the prompt settlement of public accounts and for the punishment of the crime of perjury," approved on the 1st of March, 1823, and their verdict ought to be for the prisoner, which motion the attorney for the United States opposed.

On this question, the judges were divided and opposed in opinion, whereupon, on the motion of the attorney of the United States, the said question and disagreement are stated, and ordered to be certified to the Supreme Court.

UNITED STATES OF AMERICA, } *sct.*
Seventh Circuit Kentucky District, }

I, Jonn H. Hanna, clerk of the seventh circuit court of the United States of America, in and for the district of Kentucky, do hereby certify, that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the above and foregoing adjourned question.

In testimony whereof, I have hereunto subscribed my name, [SEAL.] and affixed the seal of said court this 11th day of December, A. D. 1834, and of our Independence the 59th.

JOHN H. HANNA.